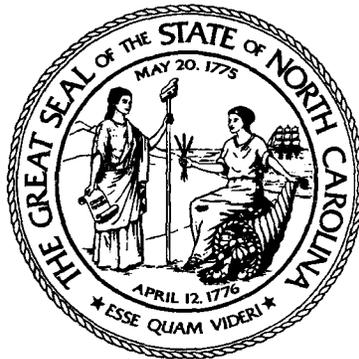


LEGISLATIVE RESEARCH COMMISSION

INSURANCE ISSUES



**REPORT TO THE
1998 SESSION OF THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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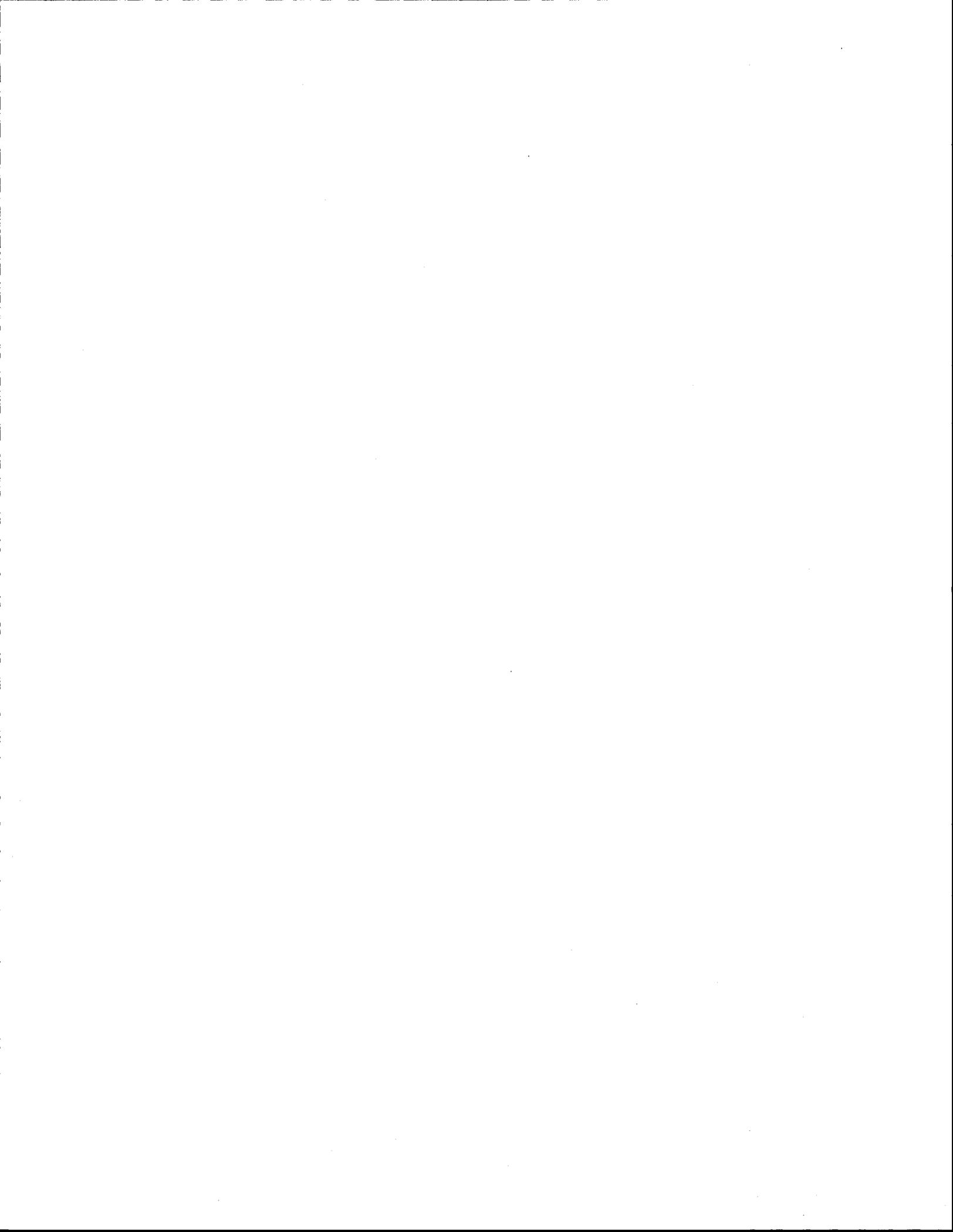
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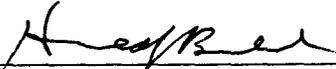
STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096

May 11, 1998

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1998):

The Legislative Research Commission herewith submits to you for your consideration its report on coastal insurance availability. The report was prepared by the Legislative Research Commission's Committee on Insurance Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,



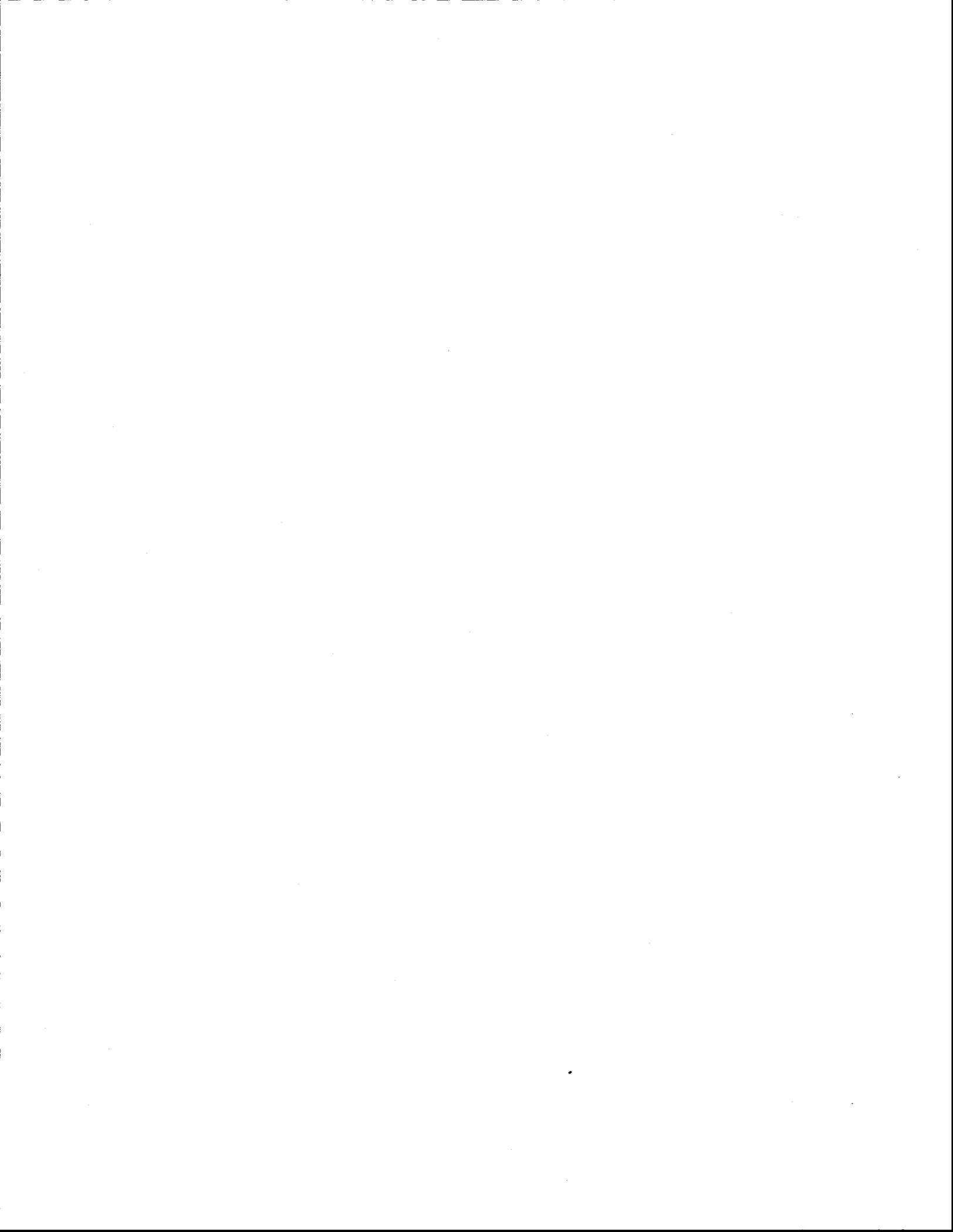
Harold J. Brubaker
Speaker of the House



Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission





1997-1999

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of the Senate
Marc Basnight, Cochair

Sen. Austin M. Allran
Sen. Frank W. Ballance, Jr.
Sen. Jeanne H. Lucas
Sen. R.L. Martin
Sen. Ed N. Warren

Speaker of the House of Representatives
Harold J. Brubaker, Cochair

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Rep. Beverly Earle
Rep. W. Eugene McCombs
Rep. Gregory J. Thompson

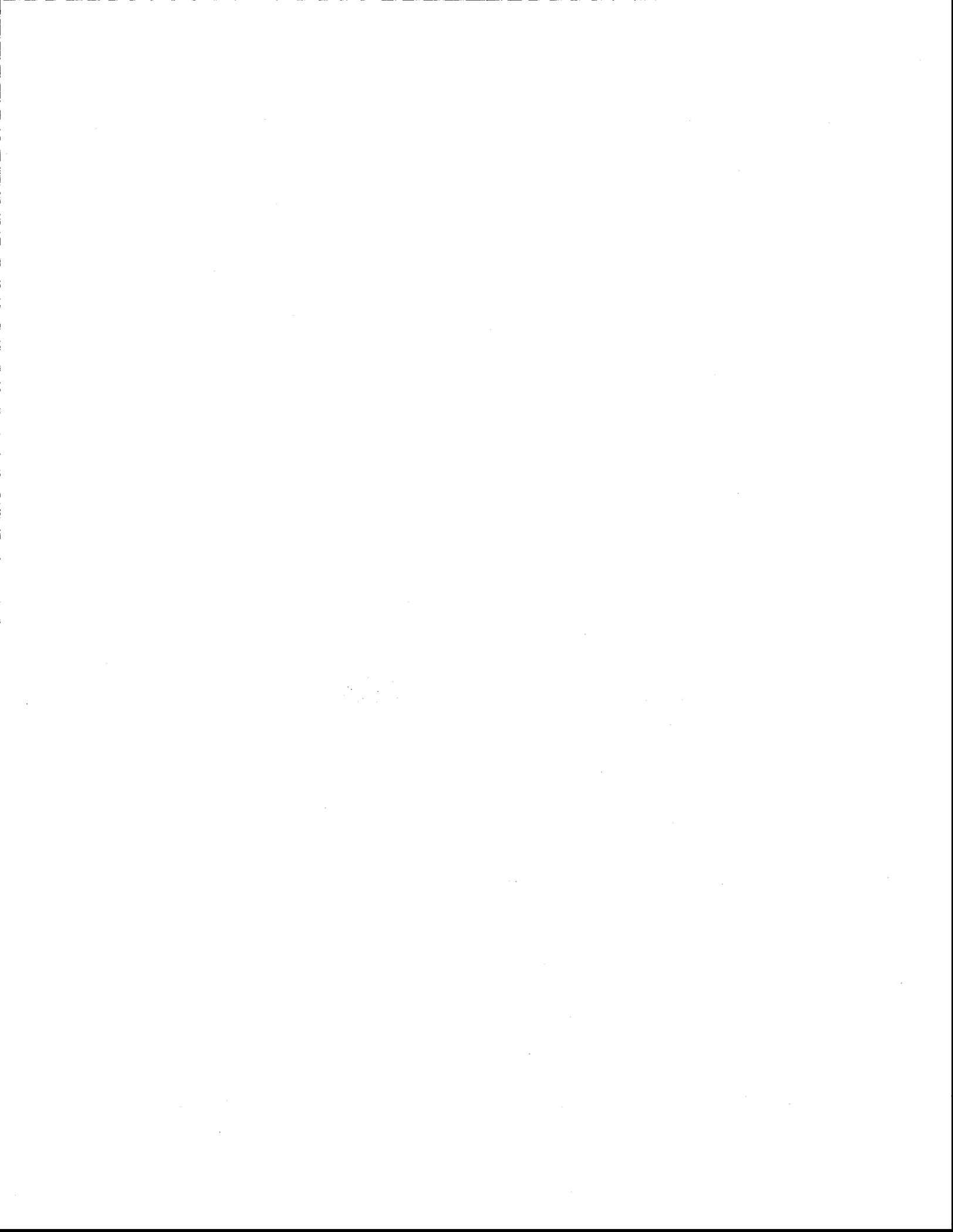


PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1997 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of coastal insurance issues was authorized by Section 11 of Chapter 498 of the 1997 Session Laws. Section 11 of Chapter 498 is included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Insurance, Property, and Annexation Grouping under the direction of Representative Jerry Dockham. The Committee was chaired by Senator R.C. Soles, Jr. and Representative Bobby Barbee. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



COMMITTEE PROCEEDINGS

FEBRUARY 25, 1998

The Committee held its first meeting on February 25, 1998. Mr. Linwood Jones, Committee Counsel, gave an overview and history of coastal insurance issues and House Bill 452. Mr. Jones noted that the issue of insurance availability in the Beach area had been an issue since the 1960s, when carriers became reluctant to write insurance after hurricanes and storms in the 1950s and 1960s hit the coast. Mr. Jones noted that this problem had spread inland in the past 5 years, largely as a result of Hurricane Andrew in Florida in 1992 and other recent storms along the East Coast. Mr. Jones noted that insurance was available through the Beach Plan and the FAIR Plan but explained that the homeowner paid significantly more for coverage through the Beach or FAIR Plans, primarily because of the loss of discounts that insurance companies offer in the voluntary market on their homeowners' policies. Mr. Jones noted that House Bill 452, which was passed by the legislature in the 1997 session and took effect January 1, 1998, expanded the Beach Plan's "wind-only" coverage to the 18 coastal counties in North Carolina. The purpose of this expansion is to encourage insurance companies to write more coverage in these counties; they can exclude the wind coverage from the policy and let the homeowner obtain the wind coverage from the Beach Plan.

Mr. Don Stauffacher, Assistant Manager of the Fair and Beach Plans of the North Carolina Insurance Underwriting Association, spoke to the Committee about House Bill 452. Mr. Stauffacher said that HB 452 provided for the following:

1. Eighteen coastal counties were added to the Beach plan for the perils of windstorm and hail.

2. Travel trailers can be included in the Beach Plan. The statutes had to be changed in order to include travel trailers, and as of the first of January, only two such trailers have been written in the Beach Plan.
3. Clarified building code information. This was a very technical change; the word "State" was added into some of the building code items in Article 45 of Chapter 58 of the General Statutes.
4. The previous session of the General Assembly had passed wording to take out the basis of a premium as a percentage of participation for the Beach plan. Wording to allow premium as basis of participation was reinstated.
5. GS 58-33-100 was clarified so that premium to the agent is not payment to the Beach Plan and that the statute does not apply to the Plan.
6. Extra expense coverage was added to business income coverage.
7. Short-term policies are allowed. This is something that would add flexibility to the Beach plan. This also helps people that are carrying business risk policies. It also helps the Beach plan in that sometimes the wind and hail policy gets out of sync with the wrap-a-round policy.
8. Requires company adjusters to adjust windstorm & hail losses in catastrophe situations.
9. Authorizes hurricane deductibles.
10. There is a limit (set at a .90 factor) on how much the Beach Plan can charge for wind coverage.
11. The .90 limit on windstorm rates will be eliminated after two years.
12. Language was added to specify that the beach and FAIR Plans are markets of last resort.
13. A legislative research committee would be established.

Mr. Stauffacher noted that there had been 56 policies written in January under this new program. Mr. Stauffacher was uncertain whether this was good, fair, or poor utilization of the program by insurers because the program was so new. He also thought that many companies

were still not completely aware of the program. Mr. Stauffacher thought that companies are enthusiastic about this program, especially since they will be able to write homeowners in the coastal areas in situations that they might have used the FAIR Plan for in the past.

Mr. Dascheil Propes, Chief Deputy Commissioner of Insurance, spoke to the Committee. Mr. Propes noted that there appears to have been about 4% growth recently on the policy count in the FAIR Plan, compared to the 2% figure usually seen on policy count growth. Mr. Propes pointed out that the FAIR Plan is the market of choice for manufactured houses.

Mr. Propes spoke briefly about pending federal legislation (HR 219), known as the Federal Disaster Bill. HR 219 offers state beach plans, FAIR plans and other residual markets to be able to buy re-insurance from the federal government for losses exceeding two billion dollars. While the Department of Insurance supports this legislation from a national perspective, it is the Department's opinion that the bill, as currently written with the \$2 billion trigger, does not offer much of value to North Carolina. It offers much more for states like Texas and Florida who have a tremendous amount of property located very close to the coast. Because North Carolina does not have nearly as much coastal property, it would not likely sustain damages that exceed \$2 billion. Thus, the \$2 billion trigger would not come into play to provide relief in North Carolina.

Mr. Propes noted that there is still resistance to writing homeowners policies and excluding the wind. He felt that until companies find out what their share is, how much their premium is, and how much exposure they have in this eighteen coastal county area, they may not write much. Mr. Propes said that he has heard from some carriers who are beginning to tell their agents that they're going to begin to write some property in the coastal area, with restrictions such as writing property more than two miles from the beach, writing with a 5% deductible, etc. He noted that some of the larger insurance companies have already begun to eliminate discounts across the State. The elimination of a discount can mean at least a 20% escalation in price on a policy in the coastal area. Mr. Propes noted that while no one wants to see price increases, it is necessary

to have an acceptable price to keep insurers in the market. Ten companies write 94% of the beach business, and three companies write two thirds of the insurance in the coastal areas of North Carolina.

Representative Redwine asked Mr. Propes at what point does the price get to a height that companies would want to come in and compete. Mr. Propes said that according to computers models, there would have to be a 300% increase in coastal insurance. The homeowners product has not been a very profitable product statewide or nationwide. Florida, after Andrew, has had four to five hundred percent increases. However, according to Mr. Propes, not one carrier has told the Department that it would write more business if prices are increased.

Representative Redwine noted that increases of this magnitude would be devastating to the coastal communities and would stop the economic engine. Statistics show that in the year 2010, 80% of the population will live within 50 miles of the coast. Mr. Propes noted that they were considering a proposal under which existing agents would write the business that they represent, and then the companies those agents represent could cede unwanted policies to the Beach Plan. Mr. Propes said this would be like a "write your own" service-and-carry kind of arrangement, similar to what is done on the policy writing side (but not the financial side) of the Motor Vehicle Reinsurance Facility. The companies would pay a policy writing fee for that, adjust the losses, and pay a loss adjustment fee. Some industry leaders say that this would save on their expenses. However, he noted that there are details that would have to be worked out. For example, the Beach Plan does not offer homeowners policies, they do not provide liability insurance, and they don't carry jewelry riders. All of this would have to be addressed.

Mr. Propes was asked whether the State could force insurance companies to write insurance in this area. Mr. Propes noted that the Attorney General had said that it is unconstitutional to force companies to write coverage in this area

Mr. Fletcher Wiley said he had some concerns about the recoupment that might go along with a reinsurance facility. He also noted that it was too early to determine what impact House Bill 452 was having.

Mr. Bill Hale, Legislative Counsel for the Department of Insurance, presented to pieces of legislation for review by the Committee and possible recommendation to the 1998 session. The first bill would re-enact the risk-sharing plan legislation that was passed in 1986 and that has been reenacted every two years since -- until last year. Last year, the provision was in a larger bill that stalled because of other concerns. As a result, the entire risk-sharing act expired in July, 1997. The second bill contained technical insurance amendments and corrections on health insurance and other matters.

Mr. Bob McKoy of the Wilmington Regional Association of Realtors spoke to the Committee. Mr. McKoy believes that House Bill 452 is merely a "band aid" cure and not a long-term solution; he suggested a more comprehensive solution. Mr. McKoy suggested reviewing the feasibility of developing a state-wide natural disaster pool similar to the Motor Vehicle Reinsurance Facility. This would be a "natural disaster" insurance pool which would place a cap on total private company exposure. This state-wide pool would cover floods, tornadoes, and hail as well as wind and hurricane losses.

Mr. Michael Davenport of the Outer Banks Association of Realtors spoke of the concerns about the availability and the affordability of homeowners insurance in the coastal counties. He noted that although the Beach Plan was formed as a market of last resort, it now writes not only the majority of wind policies in the beach area but more than half of the fire policies. Less than twenty five companies write homeowners policies voluntarily in the beach territory, and ten of those companies are writing over 90% of that business. Mr. Davenport asked what will happen to the availability and affordability of insurance if some of these companies decide to reduce the amount of business they write or decide not to write at all in coastal counties or coastal areas. He noted that one insurance company in Dare County that is still writing homeowners policies on a

voluntary basis (but limited basis) is being forced to pick and choose what homes it will insure in a given month because it is on a quota (with respect to the number of policies it can write in the coastal area). Whether or not the insurer writes the policy depends on the condition of the home, the age, the amount of the policy to be written and who is buying it. Mr. Davenport feels that this is unfair. Companies on quotas prefer not to insure smaller homes which are usually purchased by lower income families.

Mr. Davenport noted that the Beach Plan made over a hundred million dollars during the first twenty-five years of existence and that some of this profit was given back to companies that did not write business in the coastal areas. He also noted four examples of large premium increases for homeowners who were forced to go to the Beach Plan to get wind coverage.

MAY 6, 1998

The Committee held its final meeting before the short session on May 6, 1998. Mr. Bill Hale, legislative counsel for the Department of Insurance, briefed the Committee on the Department's recommendation to restore the joint underwriting authority ("JUA") authority of the Commissioner of Insurance. Under this authority, if the Commissioner (after a hearing) finds that insurance is not readily available in the voluntary market and that the public interest requires the availability of that insurance, he can order insurers to form a joint underwriting association to provide that coverage (with reasonable underwriting restrictions) or have them submit a JUA plan for his approval. Mr. Hale noted that this authority was initially given to the Commissioner in 1986 during the time it was difficult for businesses and others to obtain liability insurance. The JUA authority of the Commissioner was set to expire every two years, but, until last year, has been extended each time before expiring. Last year, the provision to renew the JUA authority was contained in a multi-provision bill that stalled. Mr. Hale believes the bill stalled for other reasons unrelated to the JUA provision. As a result, the Commissioners JUA authority

expired July 1, 1997. The Commissioner has not resorted to this authority since its inception in 1986.

Mr. Michael Davenport of the Outer Banks Association of Realtors spoke to the Committee again concerning the realtors' continuing concern about homeowners' insurance availability in the beach and coastal area. He noted that the situation had worsened since the Committee's last meeting. An insurer that had been writing 15 homeowners' policies (including the wind) per month in his area had since reduced it to 8 and that it was expected to drop to zero within a month or two. He noted that there was only one other company writing homeowners' insurance without excluding the wind, and that company was doing so only if the home was 1 mile from the ocean and had a 5% wind deductible. Mr. Davenport contacted insurance agents in Myrtle Beach and Virginia Beach about insurance availability and found, on an \$80,000 home, that the coverage was available in both areas (if 1,000 feet or more off the shore) at costs less than the cost of obtaining coverage in Dare County when wind is purchased through the Beach Plan. Mr. Davenport questioned why insurers would write homes in more populated areas (Myrtle Beach and Virginia Beach) with more north/south exposure but refuse to write the same policies in coastal North Carolina counties.

In response to a question on this same issue from Representative Dockham, Mr. Propes, chief deputy commissioner of the Department of Insurance, noted that the computer models used by the insurance companies to determine loss exposure indicated that Myrtle Beach and Virginia Beach have less potential for loss than the Outer Banks and that companies, in a competitive market, prefer to write business in higher-density areas like Virginia Beach and Myrtle Beach.

Mr. Wiley noted that 31% of the insurance companies had not responded to a request from the North Carolina Insurance Underwriting Association ("Beach Plan" association) for data on their policies written in the 18-county coastal area. Mr. Wiley recommended that the Committee send these companies a letter asking them to respond to the Association's request for data. This data is instrumental for purposes of House Bill 452. A motion to that effect was approved, and

Senator Soles noted that a letter would be written on behalf of the committee to these companies to ask that they submit their data to the Association or appear before the Insurance Issues Study Committee in the fall to explain why they had not. A motion was made to approve the final report. The motion was approved. Senator Soles noted that the Committee would resume meeting after the short session.

FINDINGS AND RECOMMENDATIONS

The Committee finds that property insurance availability and affordability in the coastal area of the State continue to be issues of concern. Homeowners, realtors, and lenders, among others, are impacted by the difficulty in obtaining property insurance in the voluntary market. Property insurance obtained through the residual markets – the FAIR plan and the Beach Plan – is significantly more expensive.

Last year, the General Assembly enacted House Bill 452. House Bill 452 extends the Beach Plan "wind-only" program into the 18 coastal counties. This gives insurers who are reluctant to write policies because of the wind loss exposure an opportunity to shed that exposure to the Beach Plan. In addition, the formula that determines the extent to which each insurer participates in the losses of the Beach Plan is designed to encourage insurers to write the entire policy, *including* the wind coverage.

The ability of insurers to write policies without wind coverage in the coastal area took effect only recently – January 1, 1998. Thus, it is difficult to determine at this stage what impact the new Beach Plan coastal area program is having on the availability of property insurance in the coastal area. The Committee is already authorized to continue meeting in the fall, at which time it can more readily assess the impact of the program and can look, if necessary, at additional options such as a catastrophic or "natural disaster" fund and administering the Beach Plan through a reinsurance concept. The Committee will also be able to better assess the prospects of pending federal legislation on this issue.

The Committee believes that the JUA (joint underwriting association) standby authority of the Commissioner of Insurance should again be reauthorized.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-498
HOUSE BILL 452
(in part)

AN ACT TO AMEND THE BEACH PLAN PARTICIPATION FORMULA, PROVIDE FOR WINDSTORM AND HAIL INSURANCE IN COASTAL COUNTIES, AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY OF PROPERTY INSURANCE IN THE STATE, AND REVISE OTHER STATUTES RELATED TO THE INSURANCE UNDERWRITING ASSOCIATION.

.....

Section 11. The Legislative Research Commission may study the provisions of Articles 45 and 46 of Chapter 58 of the General Statutes, other relevant portions of the North Carolina General Statutes, and the plans and operations of the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association. The Commission may consider all possible options to improve availability of property and homeowners insurance in the State. The Commission may report its findings and recommendations, along with legislation, to the 1998 Regular Session of the 1997 General Assembly and to the 1999 General Assembly.

.....



APPENDIX B

INSURANCE ISSUES COMMITTEE 1997-1999

Pro Tem's Appointments

Sen. R.C. Soles, Jr., Cochair
PO Box 6
Tabor City, NC 28463
(910) 653-3948

Sen. Thomas K. Jenkins
PO Box 626
Franklin, NC 28734
(704) 524-8488

Sen. Robert L. Martin
PO Box 387
Bethel, NC 27812
(919) 825-4361

Mr. Bill Smith
902 East Garrison Boulevard
Gastonia, NC 28054

Mr. Fletcher Wiley
2917 South Croatan Highway
Nags Head, NC 27959

Mr. Mark Wright
101 Live Oaks Street
Tabor City, NC 28463

LRC Member

Rep. Jerry C. Dockham
PO Box 265
Denton, NC 27239
(910) 859-2281

Staff:

Linwood Jones
Research Division
(919) 733-2578

Speaker's Appointments

Rep. Bobby H. Barbee, Sr., Cochair
PO Box 700
Locust, NC 28097
(704) 888-4422

Mr. John A. Cocklereece
1308 McDowell Drive
Greensboro, NC 27408

Rep. Arlie F. Culp
8521 US Highway 64 East
Ramseur, NC 27316
(919) 824-2218

Mr. Bill Lowry
5030-D New Centre Drive
Wilmington, NC 28403

Rep. Edd Nye
209 Ben Street
Elizabethtown, NC 28337
(910) 862-3679

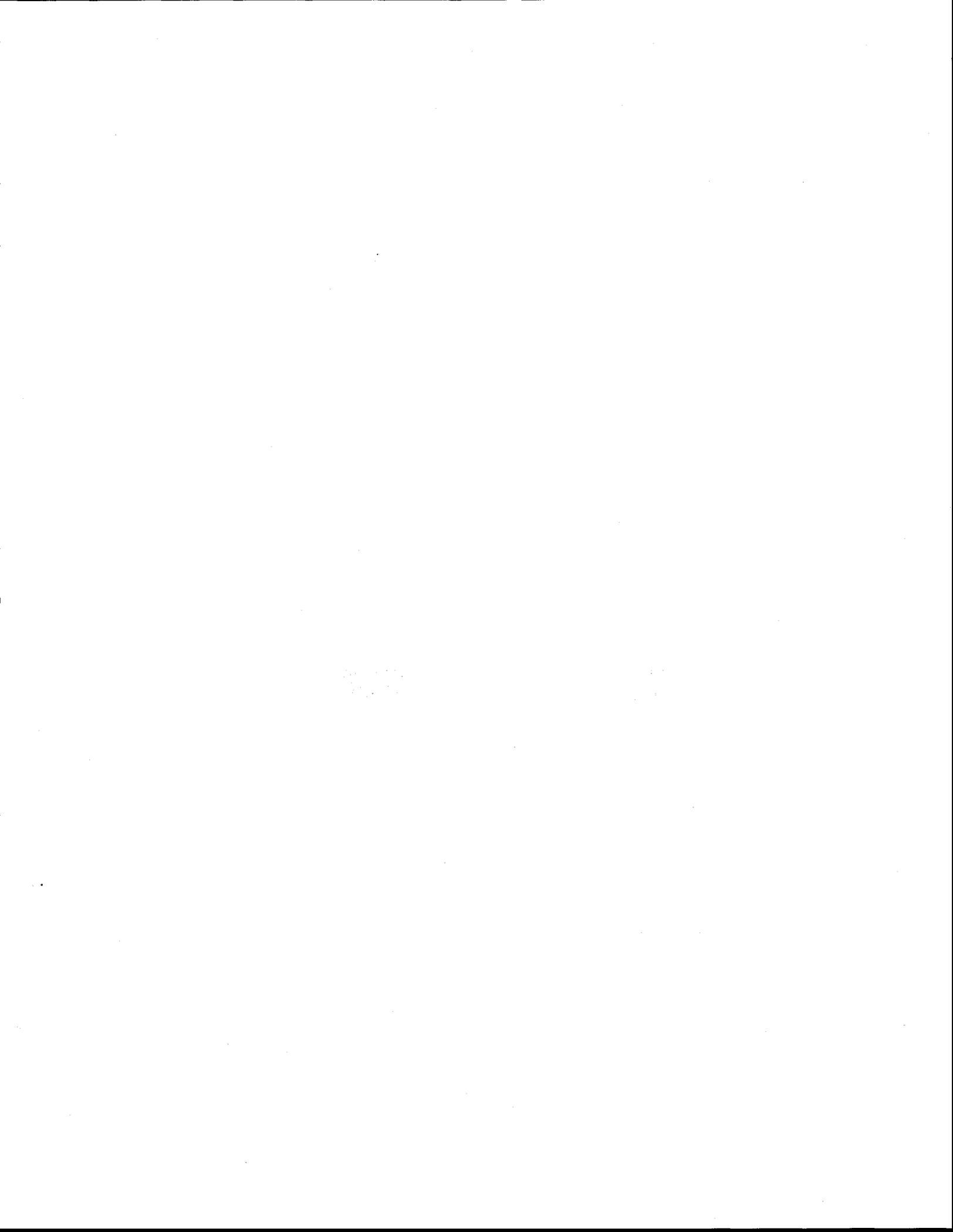
Rep. E. David Redwine
PO Box 283
Shallotte, NC 28459
(910) 754-4326

Clerk:

Joanna Mills
(919) 733-5822

APPENDIX C

RECOMMENDED LEGISLATION



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

D

DRAFT

98-RN-004.1

THIS IS A DRAFT 5-MAY-98 13:03:40

Short Title: JUA Reauthorization

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED AN ACT TO RE-ENACT THE 1986 LAW PROVIDING
2 FOR RISK-SHARING PLANS, TO AMEND THE IMMUNITY STATUTES FOR THE
3 FAIR AND BEACH PLANS, AND TO MAKE A TECHNICAL AMENDMENT IN THE
4 BEACH PLAN LAWS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 42 of Chapter 58 of the General
7 Statutes, which expired July 1, 1997, is re-enacted.

8 Section 2. G.S. 58-42-1, as re-enacted in Section 1 of
9 this act, reads as rewritten:

10 "§ 58-42-1. Establishment of plans.

11 If the Commissioner finds, after a ~~hearing held in accordance~~
12 ~~with G.S. 58-2-50, public hearing,~~ that in all or any part of
13 this State, any amount or kind of insurance authorized by G.S.
14 58-7-15(4) through G.S. 58-7-15(22) is not readily available in
15 the voluntary market and that the public interest requires the
16 availability of that insurance, he may either:

17 (1) Promulgate plans to provide insurance coverage for
18 any risks in this State that are, based on
19 reasonable underwriting standards, entitled to
20 obtain but are otherwise unable to obtain coverage;
21 or

22 (2) Call upon insurers to prepare plans for his
23 approval."

1 Section 3. G.S. 58-42-45, as re-enacted by Section 1 of
2 this act, reads as rewritten:

3 58-42-45. Article not subject to Administrative Procedure Act-
4 Act; legislative oversight of plans.

5 (a) The provisions of Chapter 150B of the General Statutes
6 shall not apply to this Article, except that G.S. 150B-39 and
7 G.S. 150B-41 apply to hearings conducted under G.S. 58-42-1.

8 (b) At the same time the Commissioner issues a notice of
9 hearing under G.S. 58-42-1, the Commissioner shall provide copies
10 of the notice to the Joint Legislative Administrative Procedure
11 Oversight Committee and to the Joint Legislative Commission on
12 Governmental Operations. The Commissioner shall provide the
13 Committee and Commission with copies of any plan promulgated by
14 or approved by the Commissioner under G.S. 58-42-1(1) or (2)."

15 Section 4. G.S. 58-42-55, as re-enacted in Section 1 of
16 this act, reads as rewritten:

17 "§ 58-42-55. Expiration.

18 This Article expires on July 1, ~~1997.~~ 2001."

19 Section 5. G.S. 58-45-60 reads as rewritten:

20 "§ 58-45-60. Association and Commissioner immune from
21 liability.

22 There shall be no liability on the part of and no cause of
23 action of any nature shall arise against ~~the Commissioner or any~~
24 ~~of his staff, the Association or its agents or employees, or~~
25 ~~against any participating insurer, for any inspections made~~
26 ~~hereunder or any statements made in good faith by them in any~~
27 ~~reports or communications concerning risks submitted to the~~
28 ~~Association, or at any administrative hearings conducted in~~
29 ~~connection therewith under the provisions of this Article.~~ any
30 member insurer, the Association or its agents or employees, the
31 board of directors, or the Commissioner or his representatives
32 for any action taken by them in good faith in the performance of
33 their powers and duties under this Article."

34 Section 6. G.S. 58-46-35 reads as rewritten:

35 "§ 58-46-35. Reports of inspection made available; immunity
36 from liability.

37 All reports of inspection performed by or on behalf of the
38 association shall be made available to the members of the
39 association, applicants and the Commissioner. There shall be no
40 liability on the part of and no cause of action of any nature
41 shall arise against ~~the Commissioner, any of his staff, the~~
42 ~~association or any of its agents or employees, or against any~~
43 ~~participating insurer for any inspections made hereunder or any~~
44 ~~statements made in good faith by them in any reports or~~

1 ~~communications concerning risks submitted to the association, or~~
2 ~~at any administrative hearing conducted in connection therewith~~
3 ~~under the provisions of this Article. any member insurer, the~~
4 ~~Association or its agents or employees, the board of directors,~~
5 ~~or the Commissioner or his representatives for any action taken~~
6 ~~by them in good faith in the performance of their powers and~~
7 ~~duties under this Article."~~

8 Section 7. G.S. 58-45-15 reads as rewritten:

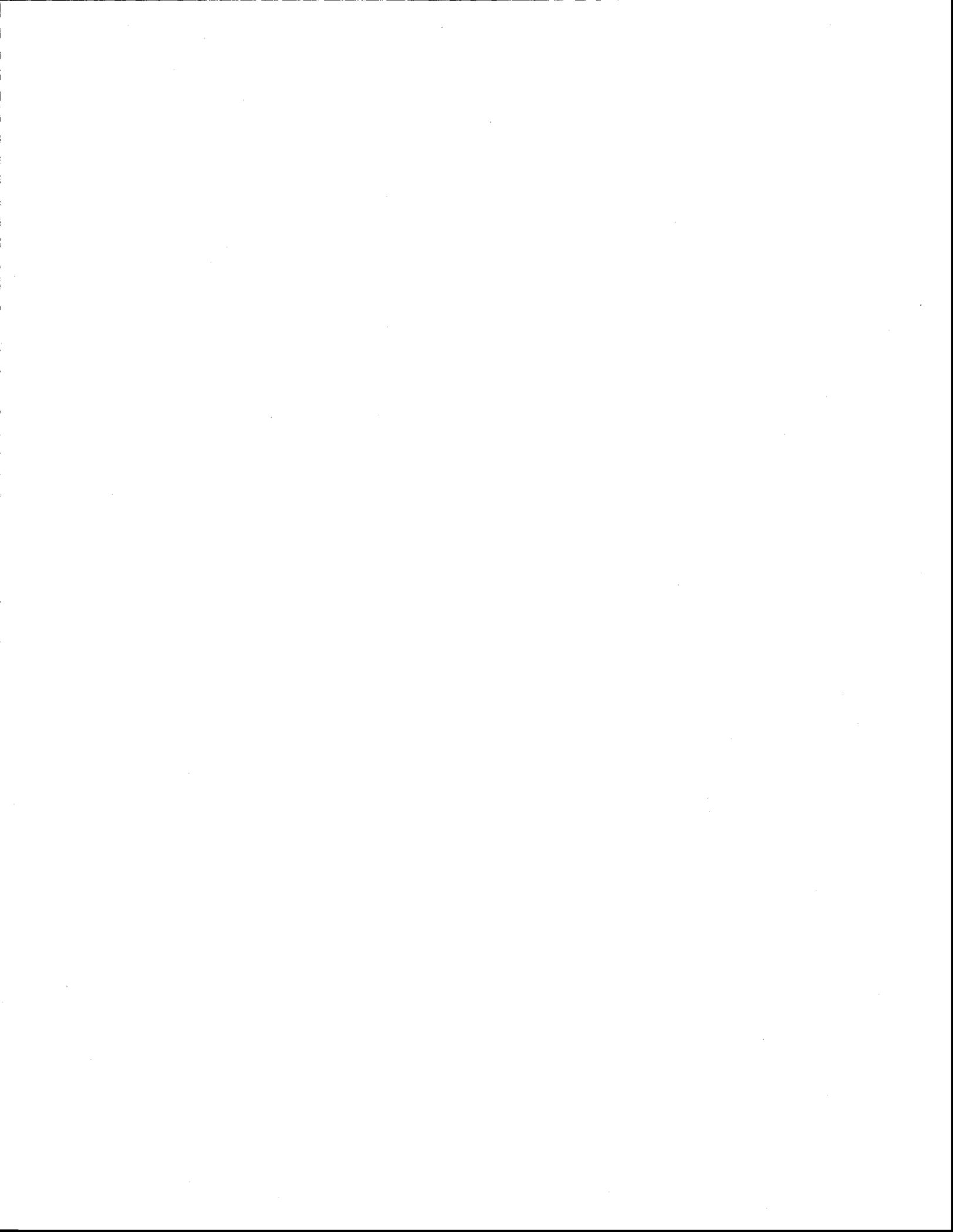
9 "§ 58-45-15. Powers and duties of Association.

10 The Association shall, pursuant to the provisions of this
11 Article and the plan of operation, and with respect to ~~essential~~
12 ~~property insurance on insurable property,~~ the insurance coverages
13 authorized in this Article, have the power on behalf of its
14 members:

- 15 (1) To cause to be issued policies of insurance to
16 applicants;
17 (2) To assume reinsurance from its members;
18 (3) To cede reinsurance to its members and to purchase
19 reinsurance in behalf of its members.

20 Section 8. If any section or provision of this act is
21 declared unconstitutional or invalid by the courts, it does not
22 affect the validity of the act as a whole or any part other than
23 the part so declared to be unconstitutional or invalid.

24 Section 9. This act is effective when it becomes law.



Expired 7/1/97

§58-41-55

ART. 42. RISK SHARING PLANS

§58-42-5

dance with rules adopted by the Commissioner. (1985 (Reg. Sess., 1986), c. 1027, s. 14; 1987, c. 441, ss. 7, 9, 10; 1991, c. 644, s. 4.)

§ 58-41-55. Penalties; restitution.

In addition to criminal penalties for acts declared unlawful by this Article, any violation of this Article subjects an insurer to revocation or suspension of its certificate of authority, or monetary penalties or payment of restitution as provided in G.S. 58-2-70. (1985 (Reg. Sess., 1986), c. 1027, s. 14.)

ARTICLE 42.

Mandatory or Voluntary Risk Sharing Plans.

~~(Expires July 1, 1995)~~

§ 58-42-1. Establishment of plans.

If the Commissioner finds, after a hearing held in accordance with G.S. 58-2-50, that in all or any part of this State, any amount or kind of insurance authorized by G.S. 58-7-15(4) through G.S. 58-7-15(22) is not readily available in the voluntary market and that the public interest requires the availability of that insurance, he may either:

- (1) Promulgate plans to provide insurance coverage for any risks in this State that are, based on reasonable underwriting standards, entitled to obtain but are otherwise unable to obtain coverage; or
- (2) Call upon insurers to prepare plans for his approval. (1986, Ex. Sess., c. 7, s. 1.)

Editor's Note. — A provision of Session Laws 1986, Extra Session, c. 7, s. 13 provided that the act, which added this Article, would expire on June 30, 1988;

however, this provision was deleted by Session Laws 1987, c. 731, s. 1. As to the expiration of this Article, see now § 58-42-55.

§ 58-42-5. Purposes, contents, and operation of risk sharing plans.

(a) Each plan promulgated or prepared pursuant to G.S. 58-42-1 shall:

- (1) Give consideration to:
 - a. The need for adequate and readily accessible coverage;
 - b. Optional methods of improving the market affected;
 - c. The inherent limitations of the insurance mechanism;
 - d. The need for reasonable underwriting standards; and
 - e. The requirement of reasonable loss prevention measures;
- (2) Establish procedures that will create minimum interference with the voluntary market;
- (3) Distribute the obligations imposed by the plan, and any profits or losses experienced by the plan, equitably and efficiently among the participating insurers; and
- (4) Establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The

filing and processing of a grievance pursuant to this subdivision does not stay the requirement for participation in a plan mandated by G.S. 58-42-10.

- (b) Each plan may, on behalf of its participants:
- (1) Issue policies of insurance to eligible applicants;
 - (2) Underwrite, adjust, and pay losses on insurance issued by the plan;
 - (3) Appoint a service company or companies to perform the functions enumerated in this subsection; and
 - (4) Obtain reinsurance for any part or all of its risks. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-10. Persons required to participate.

- (a) Each plan shall require participation:
- (1) By all insurers licensed in this State to write the kinds of insurance covered by the specific plan;
 - (2) By all agents licensed to represent those insurers for that kind of insurance; and
 - (3) By every rating organization that makes rates for that kind of insurance.
- (b) The Commissioner shall exclude from each plan any person if participation would impair the solvency of that person. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-15. Voluntary participation.

Each plan may provide for participation by:

- (1) Insurers that are not required to participate by G.S. 58-42-10;
- (2) Eligible surplus lines insurers as defined in G.S. 58-21-10(3); or
- (3) Reinsurers approved by the Commissioner. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-20. Classification and rates.

Each plan shall provide for:

- (1) The method of classifying risks;
- (2) The making and filing of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the various risks insured by the plan;
- (3) The adjusting and processing of claims;
- (4) The commission rates to be paid to agents or brokers for coverages written by the plan; and
- (5) Any other insurance or investment functions that are necessary for the purpose of providing adequate and readily accessible coverage. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-25. Basis for participation.

Each plan shall specify the basis for participation by insurers, agents, rating organizations, and other participants and shall specify the conditions under which risks shall be accepted and underwritten by the plan. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-30. Duty to provide information.

Every participating insurer and agent shall provide to any person seeking the insurance available in each plan, information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan, whenever the insurance is not readily available in the voluntary market. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-35. Provision of marketing facilities.

If the Commissioner finds that the lack of participating insurers or agents in a geographic area makes the functioning of a plan difficult, he may order that the plan appoint agents on such terms as he designates or that the plan take other appropriate steps to guarantee that service is available. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-40. Voluntary risk sharing plans.

Insurers doing business within this State or reinsurers approved by the Commissioner may prepare voluntary plans that will provide any specific amount or kind of insurance or component thereof for all or any part of this State in which that insurance is not readily available in the voluntary market and in which the public interest requires the availability of the coverage. These plans shall be submitted to the Commissioner and, if approved by him, may be put into operation. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-45. Article not subject to Administrative Procedure Act.

The provisions of Chapter 150B of the General Statutes shall not apply to this Article, except that G.S. 150B-39 and G.S. 150B-41 shall apply to hearings conducted pursuant to G.S. 58-42-1. (1986, Ex. Sess., c. 7, s. 1.)

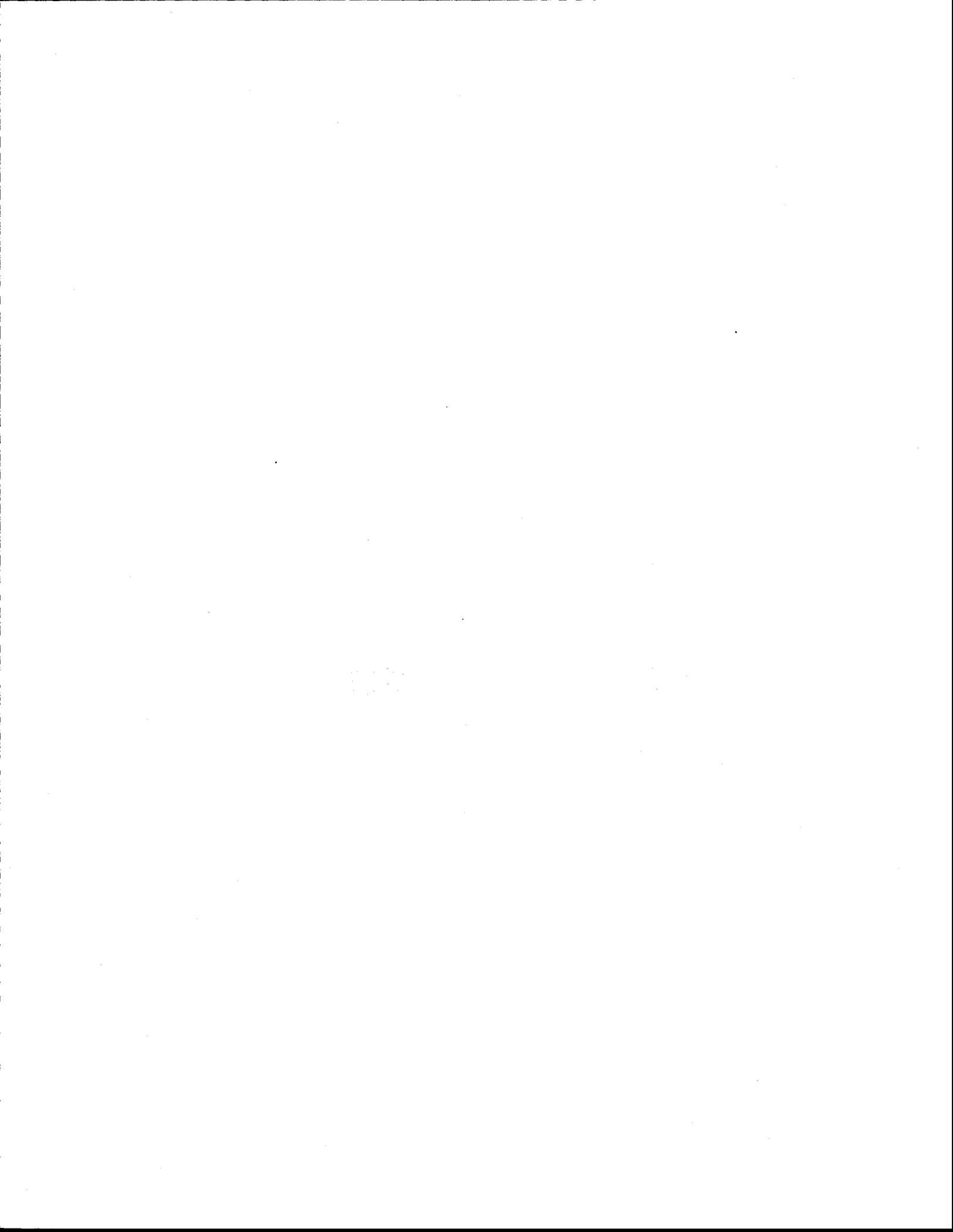
§ 58-42-50. Immunity of Commissioner and plan participants.

There shall be no liability on the part of, and no cause of action shall arise against the Commissioner, his representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this Article. (1986, Ex. Sess., c. 7, s. 1.)

§ 58-42-55. Expiration.

This Article shall expire on July 1, 1995. (1987, c. 731, s. 2; 1989, c. 137; 1991, c. 644, s. 33; 1993, c. 409, s. 5.)

Effect of Amendments. — The 1993 substituted "July 1, 1995" for "July 1, amendment, effective July 20, 1993, 1993".



APPENDIX D

EXPLANATION OF RECOMMENDED LEGISLATION

Sections 1 through 4 of the proposed legislation restore the authority of the Commissioner of Insurance to create risk-sharing plans or require insurance companies to prepare such plans. This authority was first given to the Commissioner of Insurance in 1986 as a means to address problems with malpractice insurance availability. It can also be used to address availability problems with certain other types of insurance, including property insurance. This authority, more commonly known as "JUA (joint underwriting association) authority," typically expires every two years or so, but the General Assembly has always renewed the authority before it expires until last year. Last year, the renewal provision was included in an insurance bill that stalled at the very end of the session. As a result, the Commissioner's JUA authority expired July 1, 1997. Under this proposal, the authority would be reauthorized until July 1, 2001.

Under the JUA authority, if the Commissioner finds, after a public hearing, that insurance (in this case, property insurance along the coast) is not readily available in the voluntary market and that the public interest requires that it be made available, he can order property insurers to band together into a joint underwriting association and jointly underwrite all eligible property risks that no individual insurer is willing to voluntarily insure.

In addition, Section 3 adds a requirement that the Commissioner notify the Joint Administrative Procedures Oversight Committee and the Joint Legislative Commission on Governmental Operations when he intends to hold a hearing concerning the creation of a joint underwriting association. If, after the hearing, the Commissioner does in fact order the creation of a joint underwriting association, the plan under which the JUA will operate must also be filed with both the APA Oversight Committee and Governmental Operations.

Sections 5 and 6 of the bill rewrite the immunity clauses under the Beach and FAIR Plans. The immunity clauses protect the Beach and FAIR Plan employees, their agents, the Department of Insurance, and insurance companies from liability for good faith actions taken in carrying out their duties under the FAIR and Beach Plans.

Section 7 deletes a reference in the Beach Plan laws to the Beach Plan Association's duties with respect to "essential property insurance." The Beach Plan now offers more than just essential property insurance; thus, this conforming change is made.

Section 8 is a severability clause.

Section 9 makes this act effective when it becomes law.

